

July 31, 2015

Advisory Committee on Increasing Competitive  
Integrated Employment for Individuals with Disabilities  
U.S. Department of Labor, Suite S-1303  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Advisory Committee Members:

On behalf of SourceAmerica and the network of over 500 nonprofit agencies (NPAs) we serve, we appreciate the opportunity to provide comments to the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (Committee). While we continue to support the Committee's work, we are concerned that the Committee's recommendations in interim chapter 3 on the AbilityOne Program (Program) are based on a skewed, inaccurate understanding of both the Program and the work that our 500 NPAs across the nation do each and every day to create meaningful employment opportunities for people with significant disabilities. We also have significant concerns regarding the recommendation to phase out Section 14(c) of the Fair Labor Standards Act (FLSA) without a transition plan for the hundreds of thousands of individuals that would likely lose their jobs as a result.

As you are aware, SourceAmerica® is a national leader in creating employment opportunities for a skilled and dedicated workforce: people with significant disabilities. We are one of the two AbilityOne authorized enterprises that facilitates the AbilityOne Program for the Federal government. We accomplish this through a nationwide network of more than 500 community NPA partners. Our network provides training to people with significant disabilities, assists them in identifying employment choices, and then enables them to be successful at work. In FY2014, our network employed more than 115,000 individuals with disabilities; 45,000 through the AbilityOne Program, where the average wage was \$12.66. Additionally, our network placed in excess of 23,000 individuals with significant disabilities into community employment opportunities outside of their organization and AbilityOne.

We believe it is important for the Committee to have a true and accurate understanding of the AbilityOne Program and offer the following clarifications and corrections to some of the findings and conclusions at interim chapter 3:

1) *Overview of AbilityOne Program (Placement into Competitive Employment or Supported Employment)*

On page 3, the Committee states that over the last five years, participating NPAs each placed, on average, just over 40 individuals who are blind or have significant disabilities into competitive or supported employment annually. This information is presented in a way that misleads the reader. During this timeframe, SourceAmerica's network placed more than 117,000 individuals into competitive or supported employment.

## *2) Intersection between AbilityOne and Use of FLSA Section 14(c) Subminimum Wage Certificates*

On page 3, the Committee presents a misleading view of the number of individuals being paid “subminimum wage” under FLSA Section 14(c). The supporting data presents a distorted interpretation due to an inaccurate assumption that all of wages paid under Section 14(c) are less than the federal minimum wage. Rather, these are wages based on a commensurate wage rate that is usually significantly higher than the federal minimum wage. Pursuant to the FLSA, these wages are paid based upon a worker’s individual productivity in proportion to the wage and productivity of workers without disabilities performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn. The U.S. Department of Labor (DOL) establishes this wage rate based upon the prevailing wages in the community. Further, the Committee’s analysis is limited to only 4,426 individuals employed in the AbilityOne Program. This represents just 9.5 percent of the Program’s workforce. As a result, it does not offer a complete and true picture of the AbilityOne workforce (46,621 employees). The rest of the workforce (91.11 percent) earned more than the federal minimum wage and the average hourly wage for FY 2014, taking into account the entire AbilityOne workforce was \$12.44.

## *3) AbilityOne Perpetuates People with Significant Disabilities Working for Community Rehabilitation Programs rather than Mainstream American Businesses*

On page 4, the Committee offers a flawed analysis of the AbilityOne Program’s partnership with the business community. It is based on an assumption that the Program does not involve the business community and has not been an effective springboard to permanent, integrated competitive employment in the general workforce. SourceAmerica respectfully disagrees with this conclusion and offers the below rationale.

- As noted in our January statement, our NPAs are leaders in the business community. They are actively placing people with significant disabilities in integrated competitive employment.
- In furtherance of these efforts, SourceAmerica has undertaken an initiative to partner with businesses to offer franchise, employment, and training opportunities to people with significant disabilities. The diversity of jobs created by these franchise opportunities ranges from owner/president through middle and operating management, supervisors, and direct labor positions. This initiative offers the potential for people with significant disabilities to create wealth through small business ownership and executive management in addition to traditional employment. In the past year, our franchise partnerships have created 40 new jobs for people with disabilities in competitive integrated employment.
- In addition to franchising partnerships, SourceAmerica NPAs also serve on their local workforce investment boards, chambers of commerce, and are active in their business community, though this is not reported within the findings in the interim chapter.

## *4) AbilityOne Does Not Focus on Providing Training and Experience for the Achievement of Competitive Integrated Employment Outside of the Program*

SourceAmerica respectfully disagrees with this conclusion. As noted in our January statement, the U.S. AbilityOne Commission, in partnership with SourceAmerica and NIB launched the Quality Work Environment (QWE) initiative with the goal of providing a program-wide framework to implement employer best practices toward optimizing earnings for people with significant disabilities and

capitalizing on career advancement and community-based employment consistent with informed choice. QWE is a continuous improvement process that can be tailored to the needs of each employer and its employees. More than 220 AbilityOne NPAs have successfully adopted the model.

#### *5) AbilityOne Contracts Perpetuate Congregation and Segregation*

SourceAmerica supports disability policies that allow for the full array of approaches for enhancing employment opportunities. This is consistent with the principles of the Americans with Disabilities Act. SourceAmerica's network of more than 500 NPAs offers, and continues to support, a comprehensive range of employment options. This ensures every individual with a significant disability has equality of opportunity and full participation with regard to independent living, and economic self-sufficiency. If an individual has the ability and desire to engage in competitive integrated employment, every effort must be made to support them in their choice. Options however, should also exist for those individuals who do not have the capacity to work in competitive, integrated employment settings or who choose a different setting. SourceAmerica is concerned that the Committee has lost sight of the primary goal of protecting the right of self-determination for every individual by ensuring a full and broad spectrum of choices and opportunities, including those afforded by Section 14(c) of the Fair Labor Standards Act.

Congress, in enacting the Javits-Wagner-O'Day (JWOD) Act, sought to maximize the number of employment opportunities for individuals with disabilities. AbilityOne employees most often work side-by-side with, or interact regularly with, individuals who do not have disabilities.

#### *6) Additional Conflicts of Interest for NPAs Participating in AbilityOne Program*

In the interim chapter, the Committee states, "there is limited oversight of the methods and procedures used by NPAs to make the determination of the individual's productivity. That results in an inherent conflict of interest. The NPA makes decisions regarding whether an individual should be paid a subminimum wage even though the NPA is the entity that stands to benefit financially from the payment of subminimum wages."

Like all other entities that hold a Section 14(c) certificate, every participating NPA in our network is required to adhere to the methods and procedures established by the U.S. Department of Labor. In addition, SourceAmerica has a regulatory department to assist NPAs in following the requirements established by the Wage and Hour Division relating to the use of 14(c) certificates and the U.S. AbilityOne Commission relating to eligibility requirements of the AbilityOne Program. Further, there is no financial benefit to organizations utilizing 14(c). To the contrary, it is more costly for an NPA to employ individuals through a 14(c) certificate in terms of both benefits (on service contracts, full health and welfare must be paid for every hour worked regardless of productivity) and administrative costs (time-studies, recordkeeping, etc.) We believe in total adherence to the Department of Labor's requirements and agree on the need for strict oversight and enforcement.

### **Recommendations**

As the Committee works toward finalizing its recommendations, we urge you to support policies that provide a comprehensive range of employment options for individuals with significant disabilities. This ensures every individual with a significant disability has equality of opportunity and full participation with regard to independent living, and economic self-sufficiency. For those individuals who do not have the capacity to work in competitive, integrated employment settings or who choose a different setting, SourceAmerica encourages the Committee to recognize the right of self-determination by ensuring a full and broad spectrum of choices and opportunities, including those afforded by Section 14(c) of the Fair Labor Standards Act (FLSA). This is the precept upon which Congress enacted Section 511 (Sec. 458 of P.L. 113-28) of the Workforce Innovation and Opportunity Act.

We support several of the Committee's recommendations with regards to increasing competitive integrated employment such as unified data collection to track individuals working in competitive integrated employment and organizational and personnel development for service providers to ensure that the service delivery system provides a spectrum of employment opportunities. However, we remain very concerned that the Committee fails to recognize that not every individual with a significant disability may find success in competitive integrated employment and that all types of employment options should remain available for these individuals. We do not support policies that would cause loss of wages, reduce work hours, or take away individuals' choices to work among their peers.

In regards to the Committee's recommendations to phase out Section 14(c), we urge you to reconsider our recommendations on how to improve the oversight and use of Section 14(c) as outlined in our July 13 letter. Section 14(c) currently provides otherwise unavailable opportunities for a segment of the disability community to work and earn wages. Although it should never be the first or primary option, hundreds of thousands of individuals with significant disabilities have found meaningful employment through Section 14(c). The Committee has a responsibility to these Americans, and to the millions who will follow, that otherwise may be left behind with regard to competitive employment. As members of this Committee it is your duty to ensure that they continue to have employment options consistent with their skills, talents, abilities and desires. We also urge the Committee to allow Section 511 of the Workforce Innovation and Opportunity Act to be fully implemented before recommending the phase-out of Section 14(c).

We do support the idea of modernizing the JWOD Act to align with modern disability employment policy and ensuring all employment options remain available for people with significant disabilities. The Program was designed to provide employment opportunities for individuals with significant disabilities who previously have not been successfully employed in the community. Although, our network of NPAs refer or place over 20,000 individuals with disabilities into competitive integrated employment outside of the AbilityOne Program annually; this is not, nor should it be, the primary program goal for the Program. The Program is designed to provide employment opportunities for people with significant disabilities requiring additional supports and services. In regards to establish a new definition, SourceAmerica would support amending the JWOD Act to update the definition of disability and adjust the direct labor ratio. SourceAmerica has historically, and continues to, advocate in these two areas.

With regard to an Executive Order to phase out the use of FLSA Section 14(c) certificates within the AbilityOne Program, it is important to note that there is an existing Executive Order Establishing a Minimum Wage for Contractors that raises the minimum wage to \$10.10 per hour for all workers on Federal construction and service contracts. Instead of recommending a new Executive Order, we urge the Committee to recognize the existing Executive Order and to evaluate its impact, positive or negative, before making any additional recommendations related to executive action on the use of Section 14(c). We also note that the vast majority of employment through 14(c) happens outside of the AbilityOne Program and an Executive Order would have no discernable impact toward the Advisory Committee's goal of increasing competitive integrated employment.

With regard to additional RSA guidance, RSA has already published guidance on vocational rehabilitation placement in NPAs participating in the AbilityOne Program. We support the existing guidance because it determines placement on a case-by-case basis due to the varying employment opportunities through the Program. We encourage the Committee to recognize that guidance currently exists. It is unnecessary for RSA to take further action in this area.

With regard to highly trained staff and national accreditations at NPAs, a majority of SourceAmerica NPAs are CARF-accredited. SourceAmerica also provides NPAs more than 100 training courses in organizational management, contracting management, and disability policies such as the ADA.

With regard to placements within the community, SourceAmerica initiatives already support placements in competitive integrated employment. The AbilityOne Program requires NPAs to:

*“Maintain an ongoing placement program operated by or for the nonprofit agency to include liaison with appropriate community services such as the State employment service, employer groups and others. Those individuals determined capable and desirous of normal competitive employment shall be assisted in obtaining such employment.”*

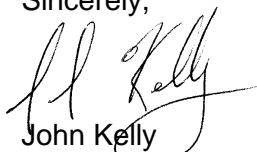
As previously stated, NPAs in our network place over 20,000 people into community jobs annually. We are concerned that creating arbitrary or artificial placement goals could have a reverse outcome leading to greater focus on placing individuals with less significant disabilities in the community.

With regard to greater investment in employing individuals in competitive integrated employment, SourceAmerica is already committed to providing NPAs training and technical assistance to identify effective practices to increase competitive integrated employment through our initiatives such as Pathways to Career and Quality Work Environment.

We appreciate the opportunity to offer comments and welcome the opportunity to strengthen and improve the Program but meaningful recommendations need to include active participation from many stakeholders—including individuals with disabilities currently working through the Program. We believe that the current recommendations are premature.

Thank you for considering our comments and recommendations. Please contact me at [jkelly@sourceamerica.org](mailto:jkelly@sourceamerica.org) or 571-226-4691 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kelly", is written over a printed name.

John Kelly  
Vice President, Government Affairs and Public Policy